

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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June 22, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2007-512-M
v.	:	A.C. No. 50-01803-74414
	:	
STATE OF ALASKA DEPARTMENT OF	:	
TRANSPORTATION AND PUBLIC	:	
FACILITIES	:	

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On May 29, 2007, the Commission received from counsel for the Alaska Department of Transportation and Public Facilities (“ADOT&PF”) a letter requesting reconsideration of the response by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) to ADOT&PF’s request that it be granted a hearing on a penalty assessment that had been issued to ADOT&PF. We construe the letter as a motion to reopen the assessment, which ADOT&PF believes had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

On December 7, 2005, MSHA issued proposed penalty assessment No. 000074414 to ADOT&PF. On December 26, 2005, ADOT&PF filed a timely notice of contest. According to ADOT&PF, it heard nothing further on the matter until it realized that the proposed penalty was included among several penalties that a collection agency was seeking to collect from ADOT&PF on behalf of MSHA. The Secretary states that she does not oppose reopening, and concedes that ADOT&PF filed a timely notice of contest.

Having reviewed ADOT&PF's motion and the Secretary's response, we conclude that the proposed assessment at issue has not become a final order of the Commission because ADOT&PF timely contested it. We deny ADOT&PF's motion as moot and remand this matter to the Chief Administrative Law Judge for further proceedings as appropriate pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Distribution

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